

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2551 OF 2003
IN
SUIT NO. 957 OF 2002

The Board of Trustees of the Port ..Plaintiffs.
of Bombay.

Versus

M/s. Wasan Export Pvt. Ltd. & Ors. ..Defendants.

Mr.U.J.Makhija i/by Mulla & Mulla for the Plaintiffs.

Mr. Manoj Khatri for the Defendants.

CORAM : S. J. VAZIFDAR, J.
DATED : 25TH NOVEMBER, 2005.

P.C.:

1. The notice of motion is taken out by defendant No.5 for striking out the pleadings under Order VI Rule 16, as false, frivolous, vexatious and an abuse of the process of law; and that the plaint be rejected under Order VII Rule 11 on the grounds that no cause of action has been shown in the plaint against defendant No.5, and for an order of dismissal the ground that the suit is barred by limitation.

2. The plaintiffs have filed this suit for a decree against the defendants in the sum of Rs. 3,20,665.21/- together with interest. The claim is in

respect of the Port Trust charges, including wharfage and demurrage charges. In April, 1995, a consignment of goods was discharged by a vessel into the custody of the plaintiffs. As the consignment was lying uncleared for over two months from the date of the landing thereof, the plaintiff in exercise of its right under sections 61 and 62 of the Major Port Trusts Act, 1963, issued a necessary notice, followed the prescribed procedure and ultimately sold the same. After giving credit for the amount received pursuant to the said sale, the plaintiffs have made a claim in the suit for the balance.

3. Defendant No.5 is a slot agent. It is only he who has taken out this notice of motion.

4. Section 2(o) of the Major Port Trust Act reads as under;-

"(o)"owner", (i) in relation to goods, includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods; and (ii) in relation to any vessel or any aircraft making use of any port, includes any part-owner, charterer, consignee, or mortgagee in possession

thereof;"

5. The plaintiff has expressly pleaded in paragraph -5 of the plaint that defendant No.5 was a slot agent and that the consignment was bought under the slot agency by defendant Nos. 5 and 6. It is further averred in the plaint that in view of the nature of defendant No.5, as a slot agent, it is the owner/agent of the vessel and as such a bailors in respect of the said consignment having discharged the same into the custody of the plaintiffs. It is also averred that as such importers/ consignees/ owners/ bailors, the defendants were bound and liable to take delivery of and clear the said consignment within seven clear days from the date of landing thereof and to pay the wharfage, demurrage and other charges which accrued thereon and which were payable to the plaintiff for the period during which the said consignment remained on the premises of the plaintiff according to the scale of rates prescribed.

6. I will assume for the purpose of this judgment that an application under Order VII rule 11 is maintainable, despite the fact that there are defendants other than defendant No.5, who have not taken out any notice of motion for dismissal of the

plaint on the ground that it does not disclose a cause of action.

7. The plaintiffs may or may not be able, at the hearing of the suit, to establish that by virtue of being a slot agent, defendant No. 5 is deemed to be an owner/ agent and as such a bailor. This will necessarily depend upon evidence produced by the plaintiffs as regards the nature of the duties of a slot agent which in turn would be essential to determine whether the same would constitute defendant No.5 an owner within the meaning of that expression in section 2(o), making it liable for the claim in the suit. If the plaintiff fails to do so, the consequences of the plaintiff failing to do so would be a dismissal of the suit on the ground that the plaintiff has not established the cause of action pleaded. But that is a different matter from saying that the plaint discloses no cause of action. I am at present not concerned with the merits of the case as regards the former ,namely, as to whether the plaintiff has established the cause of action pleaded. In this notices of motion, it is necessary for me only to consider whether a cause of action has been pleaded. That I think, the plaintiff has done. The suit is, therefore, not liable to be dismissed on the

ground that it discloses no cause of action.

8. It was then submitted that the suit is barred by limitation. Admittedly, the suit is within time. If the terminus-a-quo is taken to be the date of the sale of the goods, pursuant to the exercise by the plaintiff of its rights under section 61 and 62 of the said Act, the suit is not barred by limitation. There is no dispute in this regard. It was submitted on behalf of defendant No. 5 that the terminus-a-quo should be the date the goods landed in Bombay and were placed in the custody of the plaintiff. This point is decided against defendant No.5 by a judgment of a Division Bench of this court in the case of **The Trustees of the Port of Bombay vs. M/s. Jayantilal L. Gandhi**, reported in AIR 1979 Bombay 12 where it has been held that in a suit to recover the balance of the wharfage and demurrage charges, after giving credit for the sale proceeds the cause of action would arise when the sale takes place and the deficit of the balance of the amount recoverable is ascertained. The suit is therefore, within limit.

9. In the circumstances, the notice of motion is dismissed. Cost costs in the cause.

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